



Department of Energy  
Acquisition Regulation

No. 94-15

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# ACQUISITION LETTER

## AUTHORITY

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation Subpart 901.301-70.

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## CONTENTS

### CITATIONS

### TITLE

Federal Acquisition Regulation 31.201-2	Determining allowability
Federal Acquisition Regulation 31.201-3	Determining reasonableness
Department of Energy Acquisition Regulation 970.3101-3	General basis for reimbursement of costs

I. Purpose. The purpose of this Acquisition Letter is to provide guidance on determining the reasonableness of costs charged to Department of Energy contracts.

II. Background. The Department of Energy Acquisition Regulation, 970.3101-3 states the Department of Energy policy for determining allowability, and subsequent reimbursability, of costs under Department of Energy management and operating contracts. Department of Energy Acquisition Regulation 970.3101-3(a)(1) requires that reasonableness, including the exercise of prudent business judgment, be one of the factors in determining allowability. Recently, the Department of Energy Inspector General performed reviews, at several locations, of both incurred costs and planned expenditures. These reviews resulted in the identification of various costs categorized as unreasonable, by the Inspector General, in either nature, amount, or both. Moreover, the Report of the Contract Reform Team, Making Contracting Work Better and Cost Less (February, 1994) recommended development of guidance to aid Department of Energy staff in determining the reasonableness of contractor costs.

It has been, and remains, Department of Energy policy to reimburse only reasonable, allocable, and otherwise allowable costs. This Acquisition Letter should assist Contracting Officers in identifying unreasonable costs.

III. Guidance. The Department of Energy Contracting Officer, the Head of the Contracting Activity for management and operating contractors, is responsible for determining the reasonableness of costs reimbursed under Department of Energy contracts. This requires the exercise of reasoned judgment. Questionable expenditures and activities should be identified

## DISCUSSION PAPER

The reasonableness of a cost is just one of several criteria which must be satisfied prior to a cost being eligible for reimbursement under a Department of Energy contract. Others are:

- a. Required to perform the contract or otherwise allocable to the contract;
- b. Generally accepted accounting principles and practices appropriate to the circumstances;
- c. Standards of the Cost Accounting Standards Board as applied to management and operating contracts;
- d. Terms of the contract; and
- e. Not otherwise unallowable.

Federal Acquisition Regulation 31.201-3, Determining Reasonableness, states in part:

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor.

What is reasonable for the Department of Energy's government owned contractor managed operations depends upon a variety of considerations and circumstances, including:

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the Department of Energy's mission or the performance of contract requirements;
- (2) Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other interested parties, employees, and the public at large; and
- (4) Any significant deviations from established practices.

Determinations of reasonableness do not always lend themselves to easy resolution. It is not practicable to establish an absolute dollar value or ceiling amount above which a cost would be considered automatically unreasonable for every cost in every situation. Nor is it practicable to identify particular cost categories which are always unreasonable. Determinations, of necessity, must be made on a case-by-case basis.

If the Department and the contractor are unable to reach an otherwise satisfactory accommodation regarding unreasonable costs which may be at issue the Contracting Officer may need to issue a Notice of Intent to Disallow Costs. Action to disallow costs should be discussed with the contractor in order to avoid potential disputes.